UNITED STATES
v.
JERRY PROCK ET AL.

IBLA 78-644 Decided January 29, 1979

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring the Ute Nos. 1, 2, 4, 5, 9, 10, 16, and 18-29 placer mining claims null and void. Contest No. CO 664.

Affirmed in part; vacated in part and remanded.

1. Administrative Procedure: Adjudication--Contests and Protests: Generally--Mining Claims: Contests--Rules of Practice: Government Contests

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Where contestees deny the allegations in the complaint only as to 4 claims but not as to 15 other claims addressed in the complaint, the complaint will be taken as admitted as to the 15 claims not addressed in the answer to the complaint.

2. Contests and Protests: Generally--Mining Claims: Contests--Practice Before the Department: Persons Qualified to Practice--Rules of Practice: Government Contests

Where contestees in a mining claim contest file a timely answer to the contest complaint, this answer is efficacious as to any other contestees who are members of his family if it appears on the face of the answer that they wish to retain their interests, if any, in the claims, as the contestees who answered may be regarded as having done so on their family members' behalf. In these

circumstances, these other contestees are properly regarded as having answered the complaint, absent any manifestation of a contrary intent.

3. Contests and Protests: Generally--Mining Claims: Contests--Rules of Practice: Government Contests

Where a contestee makes a timely response to a government complaint in a mining contest which is sufficient to raise a justiciable controversy, the allegations then cannot be taken as admitted and the mining claim(s) cannot be declared null and void without a hearing.

4. Appeals--Rules of Practice: Appeals: Generally

A mining claim contestee's allegation that BLM wrongly held a mining claim null and void ab initio will not be entertained where the contention is raised long after the time for appealing the decision has passed.

APPEARANCES: Jerry Prock, pro se. 1/

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 9, 1977, the Colorado State Office, Bureau of Land Management (BLM), initiated a contest complaint against Jerry Prock et al., 2/ challenging the validity of the Ute Nos. 1, 2, 4, 5, 9, 10, 14, 16, and 18-29 placer mining claims. This complaint alleged seven specific reasons that these claims were regarded as invalid.

1/ In the notice of appeal in this matter, Jerry Prock states that he represents the Ute gypsum claim holders. Prock may properly represent the interests of these claim holders if he meets one of the qualifications set out in 43 CFR 1.3(b). Under these provisions, Prock may represent members of his family on appeal. As the record suggests that the other claimants are members of Prock's family, it is probable that it is proper for him to raise this appeal on their behalf. On remand, it should be determined which of these claimants are in Prock's family. These persons should be regarded as having taken a valid appeal from the decision in question and as having preserved their rights, if any, to the Ute Nos. 2, 4, 5, and 9 claims.

2/ The contestees are Jerry Prock, Dorotha Prock, Jerald Prock, E. D. Wilcox, Opal Prock Henderson, Linda Prock Jackson, David Prock, and the grantees, heirs, or devisees of Jerrol E. Prock.

Service of copies of this complaint on all contestees was completed on April 14, 1978.

On October 3, 1977, Jerry Prock, Jerald E. Prock, E. D. Wilcox, and Dorotha Prock, having been served with it, filed an answer to this contest complaint. This answer responded to BLM's seven allegations that the claims were invalid. Specifically, the answer alleged, inter alia, that valuable mineral deposits had been found in the Ute Nos. 2, 4, 5, 8, and 9 claims, that they are mineral in character, and that assessment work had been done on them.

On May 22, 1978, BLM issued a decision declaring all of these claims null and void as to all of the contestees, despite the answer which had been filed. BLM held that the contestees who had not endorsed this answer had failed to submit answers, and that it had taken as admitted all of the allegations in the contest complaint as to all claims without exception as to these contestees. As to the four claimants who did endorse the answer, BLM held that all of the allegations in the contest complaint were taken as admitted as to all but the Ute Nos. 2, 4, 5, and 9 claims; that allegations d. and e. were taken as admitted as to the Ute Nos. 2, 4, 5, and 9 claims; that allegation f. was taken as admitted as to the Ute No. 5 claim; and that the answer specifically met and responded to the remaining allegations in the complaint as to the Ute Nos. 2, 4, 5, and 9 claims. BLM also noted that the Ute No. 8 claim had been held null and void ab initio in a final decision issued on April 9, 1976.

BLM concluded that appellants' responses failed to deny allegations d., e., and, in part, f. and therefore regarded them as admitted. BLM held accordingly that the Ute Nos. 2, 4, 5, and 9 claims were null and void as to those claimants who endorsed the answer, as well as to those claimants who did not do so.

[1] It is established that where a contestee fails to file a timely answer to a mining claim contest complaint, the charges in the complaint will be taken as admitted, and the case will be decided without a hearing. 43 CFR 4.450-7(a); United States v. Brunker, 36 IBLA 36 (1978), and cases cited therein. This rule is mandatory. Sainberg v. Morton, 363 F. Supp. 1259, 1262-3 (D. Ariz. 1973); United States v. Niece, 33 IBLA 290 (1978); United States v. Weiss, 15 IBLA 198 (1974); see United States v. Weiss, 431 F.2d 1402 (10th Cir. 1970). Insofar as it declares null and void the interests of these claimants in the Ute Nos. 1, 10, 16, and 18-29 placer mining claims, we affirm BLM's decision, as the answer filed by them does not address these claims.

[2] However, it is necessary to vacate the remainder of BLM's decision. We cannot find that Opal Prock Henderson, Linda Prock Jackson, David Prock, James Prock, and Robert Prock failed to submit an answer to the contest complaint. Under 43 CFR 1.3(b)(3)(i), an

individual may practice before the Department in connection with a particular matter both on his own behalf and on behalf of members of his family. The answer to the contest complaint filed and endorsed by Jerry Prock and others states clearly that "[a]ll of the Prock's" are very much interested in these claims. Therefore, we conclude that this answer was made not only on behalf of those claimants who endorsed it, but also on behalf of other members of the Prock family. United States v. Hunter, supra at 29-30. On remand, the administrative law judge to whom this case is assigned should determine which of these claimants are members of the families of Jerry Prock, Jerald E. Prock, E. D. Wilcox, and Dorotha Prock, and should regard these claimants as having answered this contest complaint, unless there is a manifestation of a contrary intent.

[3] It remains to determine whether the answer of Jerry Prock et al. was a sufficient denial of the allegations therein to require that the matter be referred for hearing. We conclude that it was sufficient to raise a justiciable controversy, and that BLM erred by declaring the Ute Nos. 2, 4, 5, and 9 placer claims null and void without further proceedings before an administrative law judge. Admittedly, some elements of this answer are vague and do not foreclose the possibility that appellants may have failed to meet some requirements of the mining laws, e.g., that they may not have located the claims in accordance with Colorado law. The administrative law judge to whom the matter is assigned may determine at a prehearing conference whether appellants intended admission of any charge, as well as the effect of any such admission.

As to allegation f. (charging that the claims are not distinctly marked on the ground), appellants' answer states that this allegation is untrue as to the Ute Nos. 2, 4, 6, 8, and 9 claims. As BLM correctly points out in its decision, Ute Nos. 6 and 8 are not the subjects of this contest. Appellants failed to deny this allegation as to Ute No. 5, although they had addressed the other allegations as they concerned that claim. Inasmuch as there will be further proceedings concerning the Ute Nos. 2, 4, and 9 claims in any event, nothing will be served by holding Ute No. 5 null and void because of a technical failure in the answer which probably resulted from oversight. Accordingly, on remand, the administrative law judge should allow appellants to amend their answer as to this charge to include the Ute No. 5 claim, notwithstanding their failure to deny specifically the charge as to that particular claim in their original answer.

[4] Finally, in their statement of reasons, appellants argue that the Ute No. 8 claim was declared null and void illegally. BLM noted that this claim was declared null and void ab initio by decision dated April 19, 1976. As the time for appealing this decision has long since passed, we cannot entertain appellants' contention that this action was illegal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, vacated in part, and remanded for hearing.

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Edward W. Stuebing
Administrative Judge

We concur:

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Frederick Fishman
Administrative Judge

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James L. Burski
Administrative Judge